IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE COCHISE COUNTY MENTAL HEALTH NO. MH-200600032	)	2 CA-MH 2006-0008 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Honorable James L. Conlogue, Judge Pro Tempore

AFFIRMED

Edward G. Rheinheimer, Cochise County Attorney
By Britt W. Hanson — Bisbee
Attorneys for Appellee

Harriette P. Levitt — Tucson
Attorney for Appellant

H O W A R D, Presiding Judge.

¶1 Appellant challenges the trial court's order committing her for involuntary mental health treatment based on its finding that she was a danger to herself. She contends she was denied her constitutional right to confront witnesses against her and the evidence was insufficient to support the court's order. We affirm.

¶2 Citing *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), appellant first contends the trial court violated her right to confront witnesses against her by

granting the state's ex parte motion to have the two psychiatrists testify by telephone. "We review constitutional claims de novo." *Emmett McLoughlin Realty, Inc. v. Pima County*, 212 Ariz. 351, ¶ 16, 132 P.3d 290, 294 (App. 2006).

¶3 First, we agree with the state that appellant waived any challenge to the trial court's order permitting telephonic testimony by failing to object to the procedure below. Although the state's motion was granted without allowing appellant to respond, the motion and order were served on appellant's counsel on the same day they were filed. Appellant had the opportunity to object and allow the trial court to correct any alleged error, but failed to do so. *See In re Maricopa County No. MH 2002-000767*, 205 Ariz. 296, ¶ 25, 69 P.3d 1017, 1022 (App. 2003).

¶4 Second, appellant has not cited any authority for her assertion that civil commitment proceedings are quasi-criminal, and we are aware of none. No aspect of the proceedings involves finding a proposed patient has committed a crime, and none of the definitions for the categories upon which a person may be committed includes any mention of a crime. *See* A.R.S. § 36-501(5), (6), (16), and (33). A court may order a person committed for mental health treatment upon clear and convincing evidence, and the Arizona Rules of Civil Procedure apply to such proceedings. *See* A.R.S. §§ 36-540(A); 36-539(D). Although we agree with appellant that, "because civil commitment constitutes a significant deprivation of liberty, the state must accord the proposed patient due process protection," *In re Maricopa County No. MH-90-00566*, 173 Ariz. 177, 182, 840 P.2d 1042, 1047 (App.

1992), we do not agree that such proceedings are "quasi-criminal in nature" or that *Crawford* is applicable.

¶5 Appellant further argues that the trial court erred by having Dr. Alvarez testify despite the court reporter's twice-repeated complaint that he could not understand the doctor and could not report his testimony properly.[1] When Dr. Alvarez first attempted to testify, he explained he did not have his report of his examination of appellant with him and did not remember enough about her to testify without it. The trial court properly responded to appellant's objection, made under § 36-539(B), to the state's suggestion that the court simply admit Dr. Alvarez's report and dispense with his testimony. Dr. Alvarez's testimony was temporarily terminated, and other witnesses testified while he returned to the hospital so he could review his report and then testify.

¶6 The court reporter's complaint arose sometime after Dr. Alvarez began testifying again. We agree the testimony the reporter transcribed before he first complained does not make sense. Appellant's attorney also complained she could not understand Dr. Alvarez. The court responded by informing Dr. Alvarez of the problem, making certain he was testifying about appellant, and asking him to speak more slowly and clearly. And the state asked Dr. Alvarez to repeat his previous testimony. The reporter's second complaint occurred shortly thereafter. The court then summarized what it understood the doctor's testimony had been and confirmed the accuracy of that summary with Dr. Alvarez. The state

[1]The transcript does not support appellant's assertion that the court reporter complained three times.

then asked him additional questions, and the court reporter did not again complain about Dr. Alvarez's testimony. At the conclusion of Dr. Alvarez's direct examination, appellant's attorney objected to his continuing to testify telephonically, but the court directed the hearing to continue.

¶7 Appellant contends on appeal that, because the court reporter had difficulty reporting Dr. Alvarez's testimony, it is unclear what his testimony actually was. She asserts that § 36-540 requires two physicians to "certify" that a proposed patient should be committed for involuntary treatment and that the court relied only on unintelligible testimony and Dr. Alvarez's report in ordering her committed. We find no merit to her arguments. Section 36-539(B) requires the "testimony of the two physicians who performed examinations in the evaluation of the patient." It requires the physicians to testify about their examination and express their opinions on whether the person meets the statutory requirements for involuntary commitment. § 36-539(B). Those requirements were met here.

¶8 Although the court reporter expressed his difficulty in understanding Dr. Alvarez, except for the one answer the court summarized, whose accuracy Dr. Alvarez confirmed, his testimony is sufficient for review purposes. And nothing in the record supports appellant's claim that the trial court relied only on Dr. Alvarez's testimony and report in ordering appellant committed for treatment.

¶9 We also find no merit to appellant's contention that the evidence was insufficient to support the commitment order. We will uphold a commitment order if it is supported by substantial evidence. *In re Maricopa County Mental Health No. MH 94-*

00592, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995). Appellant primarily contends the evidence failed to show she constituted a danger to herself at the time of the hearing, noting she had voluntarily submitted to treatment and was taking prescribed medications. She also asserts her suicide attempt had been precipitated by her marital problems and she had since determined she would end her relationship with her husband and move on with her life.

¶10 The trial court found appellant was a danger to herself. Section 36-501(6) provides:

> "Danger to self" means:
>
> (a) Behavior that, as a result of a mental disorder, constitutes a danger of inflicting serious physical harm upon oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out.
>
> (b) Behavior that, as a result of a mental disorder, will, without hospitalization, result in serious physical harm or serious illness to the person, except that this definition shall not include behavior that establishes only the condition of gravely disabled.

¶11 Two fire district employees testified they had responded to a call about an attempted suicide about ten days previously and had found appellant in the bedroom of her home, hysterical and very agitated. She told them she had taken about one hundred pills of a medication, an amount one of the employees testified appellant knew was a lethal dose. She was also distraught about her father's recent death and said he called to her from his

coffin at night. Although her rescuers were able to persuade her to go to the hospital and take activated charcoal as an antidote, she told one of them she would try to kill herself again when she returned home and had enough pills to do so.

¶12 Dr. Able, her treating psychiatrist, testified that appellant, who was then fifty-seven years old, suffered from recurrent major depressive disorder and had since she was nineteen years old. He reported she had been taking antidepressant medications and receiving psychotherapy since her diagnosis; he also said she would continue to require treatment for the condition in the future. In addition, Dr. Able noted that appellant was in the midst of a divorce, an overwhelming experience for her, and that she was extremely sensitive to the antidepressant medication, which required her to slowly increase the dosage under medical supervision. Because she had taken the medications for such a long time, he said, she had begun to suffer side effects from them.

¶13 Dr. Able testified that, although appellant had improved since she had entered the hospital, her depressive symptoms had not improved enough for her to be discharged. He pointed out that she was not attending all group sessions, was remaining in a hospital gown in bed the whole day, and was isolating herself from others. Able acknowledged that appellant had said she wanted to "get on with life" and did not want to be in the hospital. He also said she continued to be very depressed, her insight was impaired by her illness as reflected by her suicide attempt, and she would be a substantial danger to herself if discharged that day. In fact, he testified: "I think if she is not Court ordered to treatment,

if she is released, she will end up taking her life." He also said he believed appellant had really wanted to kill herself and had not simply been seeking attention.

¶14 Appellant is correct that Dr. Alvarez's testimony was less definitive. He diagnosed appellant as suffering from bipolar disorder with her most recent episode being depressed, pointing out the diagnosis was quite close to that of major depressive disorder. He also noted that she had been depressed most of her life and said her illness was a serious mental disorder. Because he had not seen appellant since his evaluation, he was unable to testify whether her condition had improved since then or whether she could safely be discharged. Finally, he acknowledged there had been some evidence she was not a danger to herself at the time he had examined her, but said he could not say whether she was a danger to herself at the time of the hearing. He had, however, checked a box on the physician's affidavit attached to the petition for court-ordered treatment showing his opinion that appellant was a danger to herself.

¶15 Appellant is also correct that her close friend testified she believed appellant's suicide attempt had been "a cry for love" rather than a serious attempt to kill herself. When appellant herself spoke to the court, she reported she was mourning the death of her father and said she had "not had a typical mourning time." She insisted she was not suicidal but said everything in her life had "been on hold" for months because her father had died. She included in that statement physical therapy and psychotherapy. In addition, appellant expressed a strong desire to be released from the hospital and return to her job. And she said she had taken the pills gradually during her suicide attempt, acknowledging she had not

been thinking clearly at the time. But any conflicts in the testimony were for the trial court to resolve. *See In re Estate of Zaritsky*, 198 Ariz. 599, ¶ 5, 12 P.3d 1203, 1205 (App. 2000). This court does not reweigh evidence on appeal. *Pro Finish USA, Ltd. v. Johnson*, 204 Ariz. 257, ¶ 23, 63 P.3d 288, 294 (App. 2003). Instead, our obligation is to determine whether substantial evidence supports the court's ruling. *Maricopa County No. MH 94-00592*, 182 Ariz. at 443, 897 P.2d at 745. We conclude that it does.

¶16 We disagree with appellant that no evidence was presented about her inability or unwillingness to accept treatment voluntarily, a requirement under A.R.S. § 36-533(A)(3). Although appellant apparently did not refuse to take the activated charcoal on the way to the hospital and although she had apparently voluntarily taken the medications prescribed for her pending the hearing, Dr. Able made it clear she was not fully participating in the treatment prescribed. And she begged the court to let her leave the hospital even though Dr. Able had testified she needed further treatment before she would cease being a danger to herself. The specific requirement about which appellant insists there was no evidence—that physicians discuss the advantages and disadvantages of the proposed treatment plan and alternatives—applies to commitment of a person who is persistently or acutely disabled, not a person who is a danger to self. *See* § 36-501(33)(b).

¶17 We therefore affirm the trial court's commitment order.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

GARYE L. VÁSQUEZ, Judge